

OFFICE OF
THE ATTORNEY GENERAL



STATE OF UTAH

R. PAUL VAN DAM - ATTORNEY GENERAL

1636 WEST NORTH TEMPLE, #300 • SALT LAKE CITY, UTAH 84116 • TELEPHONE 801 538 7227 • FAX NO. 801 538 7315

JOSEPH E. TESCH
CHIEF DEPUTY ATTORNEY GENERAL

RECEIVED

SEP 26 1991

MEMORANDUM

TO: JERRY OLDS
Special Investigations Directing Engineer **WATER RIGHTS**
SALT LAKE

FROM: JOHN H. MABEY, JR. *JM*
Assistant Attorney General

DATE: September 24, 1991

RE: Comments on Redraft of the Proposed Distribution Plan for
Utah Lake Drainage Basin

Overall, I am impressed with the redraft of the plan. Your efforts have paid off. I can tell you have refined your thinking and clarified many of the points raised by the water user comments. I will find it difficult to believe if anyone gets confused about the purpose of this plan and how it will or will not affect the water rights within the Utah Lake Drainage Basin.

Before I make some specific comments, let me state generally what my comments relate to. First, throughout the plan it should always be made clear that the plan is not determining the extent of someone's water right, but that such determination is, of course, something that must be addressed ultimately in the general adjudication. I know you included a sentence or two along those lines, but I think it is something we can't overemphasize. It is important that the water users not think that this distribution plan is immediately adjudicating their water rights, or there will be stiff resistance. Therefore, some of my suggestions relate to

word choices that may seem technical but are aimed at making it clear that this plan is not purporting to adjudicate anyone's water rights, but that such adjudication will occur in the pending court proceeding.

Second, my other comments deal with clarity of the plan. As I read it I put myself in the place of a water user to see if it made sense. I had problems fully understanding the concept of primary storage versus priority storage; but then again, I'm learning.

And lastly, did I miss something or was the previously announced exchange policy of requiring a one-for-one exchange within a two week period, dropped? I did not see it in the redraft and was wondering if there was a reason for dropping it.

SPECIFIC COMMENTS

<u>Page, line</u>	<u>Comment or Humble Suggestion</u>
p.1, 1.18	change "rights" to "distribution"
p.1, 1.20	change "define" to "clarify"
p.2, 1.5	change "established" to "fully understood by everyone involved"
p.2, 1.19-20	the sentence should read "Such items will be addressed <u>and ultimately resolved</u> in the <u>court</u> adjudication process"
p.2, 1.23	change "could" to "can"
p.5, 1.23	at the end of page 5 add the following sentence: "But, it should be noted that these acreage amounts used in this plan, and in the Welby Jacob Exchange Project, are subject to adjudication in the pending general adjudication proceedings."
p.7	perhaps a small drawing illustrating the different storage rights would be helpful

- p.10, 1.5 change "determined" to "clarified"
- p.11, 1.8 the sentence should read: "Criteria ~~needs to~~
will be set in Section 3.2 to determine if
when the rights in Utah Lake will likely be
satisfied." (Have I changed the meaning or
clarified what you intended?)
- p.11, 1.19 sentence should read: "The ~~predetermined~~
criteria of Section 3.2 ~~mentioned above~~, which
indicate with a high degree of certainty that
the rights in Utah Lake will be satisfied,
~~would dictate~~ when the upstream reservoirs
~~would be~~ can ~~allowed to~~ convert their system
storage to what is ~~was~~ referred to as priority
storage. (Have I changed the meaning?)
- p.11, 1.23 change "is" to "was"
- p.15, 1.21 change "affects" to "effects"
- p.15 with regards to Section 4.0 on direct flow
rights, I need to sit down and discuss with
you in more detail what the effects of this
proposal are
- p.17, 1.12 omit the comma and then insert, "without
having adequate resources"
- p. 18, 1.7 delete the word "in" and add "as to" at the
end of that line
- p.20, 1.3 add after "water use" the following phrase
"and in order to administer the water rights
on a basin-wide basis,"

I would like to attend any staff meeting you have on the
redraft so I may further explain my comments and discuss the Direct
Flow Rights section.

JHM/ac

cc: Bob Morgan
Lee Sim
Jim Riley
Mike Quealy